This last case is directly in point and was decided upon practically the same facts as the instant case.

The question of mental anguish in telegraph cases has been settled in Virginia by statute. Here it is provided that "mental anguish may be considered in the determination of the quantum of damages" but it is expressly held that no recovery could be had for mental suffering in an independent action. *Connelly* v. *Western Union Telegraph Co., supra.* See VA. CODE, 1919, § 4051.

Also in Virginia, by statute, it is provided that for every failure to transmit or deliver a message as promptly as practicable, the telegraph company shall forfeit $100. See VA. CODE, 1919, § 4042. Recently this statute has been amended and the penalty for nondelivery has been reduced to $50. ACTS OF ASSEMBLY, 1922, 550.

For an excellent note on mental anguish in telegraph cases, see 2 VA. LAW REV. 457.

TRADE MARKS AND TRADE NAMES—UNFAIR COMPETITION—LONG CONTINUED USE OF A GEOGRAPHICAL NAME MAY GIVE EXCLUSIVE RIGHT.—The plaintiff had for many years used the name "Tabasco" as distinguishing a pepper sauce made by him. The name was that of a particular locality from which the pepper was supposed to come. The defendant began the use of the word "Tabasco" to identify a pepper made by him. The plaintiff brought a bill in equity to enjoin the defendant from so using the name, alleging such use to be unfair competition. *Held,* injunction granted. *Trappey* v. *McIlhenny* (1922), 281 Fed. 23.

A review of the multiplicity of authority on this subject shows many cases in seeming conflict. It is impracticable to give an exact statement of what trade marks may consist under all circumstances, but it seems safe to say that a geographical name, standing alone, cannot be a trade mark so as to give exclusive right to its use. *Canal Co.* v. *Clark* (1871), 80 U. S. 311.

The exclusive use of a geographical name can only be acquired by showing that the name was adopted for the purpose of identifying the origin and ownership of the article to which it attaches, and cannot be a name used to designate a locality or region of a country, merely. *Columbia Mill Co.* v. *Alcorn* (1893), 150 U. S. 460; *Hoyt* v. *Lovett* (1895), 71 Fed. 173.

Where the name "Glendon" was given to an iron, mined in a place which was later known as the Valley of Glendon, injunction was denied the plaintiff, who sought to enjoin the defendant from using the name "Glendon", on the ground that the name was a truthful description of the goods of the defendant and equity will not enjoin the truth. *Glendon Iron Co.* v. *Uhler* (1874), 75 Pa. 467, 15 Am. Rep. 599. In accord, *Scandinavia Belting Co.* v. *Asbestos and Rubber Works of America* (1919), 257 Fed. 937.

The above cases seem to embody the general rule with respect to geographical names used primarily to designate locality. Unless fraud is shown no injunction can be had to prevent the use of the name of a locality. *Elgin Butter Co.* v. *Sands* (1895), 155 Ill. 127, 40 N. E. 616.

If, however, a person uses the name of a place to designate the origin

or ownership of the goods, such name may become exclusive. *El Modelo Cigar Co.* v. *Gato* (1890), 25 Fla. 886, 7 So. 23; *La Republique Francaise* v. *Saratoga Vichy Springs Co.* (1901), 107 Fed. 459, 65 L. R. A. 830. Also where the defendant is guilty of deception, as where he does not live or produce his goods in the place named, injunction may be granted. *Bissell Chilled Plow Works* v. *T. M. Bissell Plow Co.* (1902), 121 Fed. 357. In *Waltham Watch Co.* v. *United States Watch Co.* (1899), 173 Mass. 85, 53 N. E. 141, injunction was allowed the plaintiffs who had used a geographical name to identify their watches, on the ground that the use of the name had led to a secondary meaning with relation to the goods. Where such secondary meaning is found to exist, a remedy under the doctrine of unfair competition may be had. *La Republique Francaise* v. *Saratoga Vichy Springs Co., supra.*

In the present case, it was found that the word "Tabasco" had, by long use, become identified with the goods sold by the plaintiff so that the public relied upon the name as the plaintiff's manufacture. Also, that the defendant's act took advantage of the plaintiff's commercial reputation. Such an act would be in effect a fraud upon the plaintiff's customers. It is said by Justice Holmes, "The name of a person or a town may have become so associated with a particular product that the mere attaching of that name to a similar product, without more, would have all the effect of a falsehood." *Herring-Hall-Marvin Safe Co.* v. *Hall's Safe Co.* (1908), 208 U. S. 554. See also *Walter Baker & Co.* v. *Slack* (1904), 130 Fed. 514. The rights of both parties may be reconciled by allowing the use of the name, provided an explanation is attached in clear and unmistakable terms. *Singer Manufacturing Co.* v. *June Manufacturing Co.* (1896), 163 U. S. 169.

The decision in the instant case seems in accord with the authorities and with the principles of equity.

WILLS—STATEMENT MADE BY DECEDENT, ABOUT TO EMBARK FOR THE WAR IN EUROPE, HELD ADMISSIBLE AS NUNCUPATIVE WILL.—A statement was made by the decedent, a soldier, while embarking with his regiment for service overseas that, "if anything should happen to me on the other side, I want Carl to have everything". *Held*, statement admissible as valid nuncupative will. *In re Stein's Will* (1922), 194 N. Y. S. 909.

The English Statute of Frauds, 29 Car. 2. C. 3, exempted soldiers in "actual military service, or any mariner or seaman being at sea", from the restriction imposed by that act upon the disposition of personalty by devise.

In America the majority of the States have adopted the wording of the English statute, and permit the disposition of personalty by soldiers in "actual military service", or sailors at sea, by the methods recognized by the common law before the passage of 29 Car. 2, and among others, by nuncupative wills. *Leathers* v. *Greenacre* (1866), 53 Me. 561; *Van Deuzer* v. *Gordon's Estate* (1866), 39 Vt. 111; *Gould et als.* v. *Safford's Estate* (1866), 39 Vt. 498.

The rule of construction prevailing in England as to the meaning of the statute appears to be consistently followed in this country. Thus the following have been held to be in "actual military service": A soldier